IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.617 OF 2003
IN
WRIT PETITION NO.626 OF 2003

AFL Private Limited & anr. ..Petitioners.
Vs.
Union of India & anr. ..
Respondents.

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Mr. P.K. Samdani i/b M/s. Bhaishanker Kanga & Girdharlal for Respondent No.2 in support of the Notice of Motion.
Mr. J. Pochkhanwalla with Mr. D.D. Madon i/b Mulla & Mulla & Craigie Blunt & Caroe for the Petitioners to show cause.
Mr. Y.S. Bhate with Mr. A.S. Rao for Respondent No.1.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J,

26h August, 2004.

P.C. :

1. In this Notice of Motion it is prayed that the petitioners be directed to pay the arrears of Gross Turnover Royalty at the rate of 11% per annum as demanded by the Second Respondent for the period from 1st January, 1996 to 31st December, 2002.

2. Before we examine the controversy involved in this case, it

would be appropriate to refer to the order of the Division Bench of this Court passed by Mr. Justice H.L. Gokhale and Mr. Justice D.G. Deshpande on 16th April, 2003. The order reads as under :

> "2. The question involved in this matter is regarding gross turn over royalty over and above the licence fee being charged to the Petitioners. Some what similar question is involved in an earlier petition being Writ Petition No.2430 of 1996. Hence Rule, to be heard along with earlier Writ Petition.
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> 3. Mr. Pochakhanwala appearing for the Petitioners makes a statement that the Petitioners will pay gross turn over royalty at the rate of 11% as demanded by the Respondents from 1st January 2003 onwards. He further makes a statement that the figures with respect to the gross turn over from 1st January, 1996 will be furnished to the Respondents within three months from today. As far as dispute with respect to the premises is concerned, that is a matter which will be sorted out between the parties. As far as charging of licence fee at the rate of one and half times as compared with other parties is concerned, the Petitioners will be at liberty to represent to the respondents. The arrears from 1st January 2003 till end of March 2003 will be cleared by the end of June 2003. Payment for the month of April onwards will be paid regularly. All respondents waive services. Interim relief as far as passes are concerned will continue till disposal of the Petition."

3. While passing the order, the Division Bench of this Court directed the petitioners to pay gross turnover royalty at the rate of

11% from 1st January, 2003. The Court further observed in the order that the figures with respect to the gross turnover from 1st January, 1996 will be furnished to the respondents within three months from that date. The Court did not pass the order from 1st January, 1996 to 31st December, 2002 because the figures were not available with the Court at that time. Admittedly, now the figures are available from 1st January, 1996 to 31st December, 2002. We see no justification why now the petitioners be not directed to pay the gross turnover royalty from 1st January, 1996 to 31st December, 2002.

4. In another Writ Petition, namely Writ Petition No.2430 of 1996, a learned Single Judge of this Court had directed the petitioners therein to pay gross turnover royalty from 1st January, 1997. Even for this reason, we do not see why the petitioner in this case be not directed to pay the amount from 1st January, 1997 to 31st December, 2002. The order passed by the learned Judge reads as follows :

"Rule, returnable on 17th March, 1997. Hearing expedited. Liberty to apply for fixed date. Respondents waive service.

Interim relief in terms of prayer clauses (b) and (c), subject to the following conditions :

(i) The petitioners through their counsel agree and undertake to regularly pay the future licence fee at 11% of the gross turnover with effect from January, 1997.

(ii) The petitioners through their counsel further agree and undertake to pay to the respondents a sum of Rs.15,00,000/- in two equal instalments of Rs.7,50,000/- each, payable on 30th June, 1997 and 31st December, 1997.

(iii) The petitioners will be at liberty to apply for space for their activities in the airport and if such application is made, the authorities to consider the application on its own merit subject to availability of premises. It is, however, made clear that the application shall not be liable to be considered unless the petitioners clear the first instalment as per this order."

5. The Notice of Motion is allowed and the petitioners are directed to pay the outstanding amount within four weeks from today.

The Notice of Motion is accordingly disposed of.

The parties to act on a copy of this order duly authenticated by the office of this Court.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.